IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.40033 of 2006
KANHIYA RAM & ORS
Versus
STATE OF BIHAR & ANR

For the petitioners: Mr. Nil Kamal
For the State : Mr. Md. Mushtaque Alam, APP
For the O.P.no.2: Mr. Jagdish Prasad No.1 and Mr. Virendra Kumar
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10 **4.7.2008** Heard learned counsel for the petitioners ,learned counsel for the state and learned counsel for opposite party no.2.

This application has been filed for quashing the order dated 7.8.2006 passed by learned Chief Judicial Magistrate, Buxar in Dumraon P.S. case no. 166/05 corresponding to G.R.no. 1333/05 whereby and whereunder he had taken cognizance under section 420, 167 and 120B of the Penal Code against the petitioners.

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Shortly stated that the case of the complainant/opposite party no.2 is that on 23.8.2004 he filed Complaint Case no. 519©/04 in the court of Chief Judicial Magistrate, Buxar against the petitioners accused alleging therein that he is a general public of the panchayat. Petitioner no.1 Kanhiya Ram at the relevant time was up-mukhiya of the panchayat. He was working in place of mukhiya as the elected mukhiya was in jail. He further stated that a general meeting of the panchayat was held on 2.7.2004 in which petitioners/accused, informant and others participated. In the meeting several proposals were passed and it was decided to provide

the benefit of General Indira Awas Yojna to five persons. Similarly it was decided to provide house under Pradhan Mantri Awas Yojna to five persons. Those proposals were incorporated in page nos. 13 to 16 of the proceeding book of general meeting. Petitioners accused prepared the note of the proceedings and signed the proceeding book. Later on the complainant learnt that the petitioners accused have changed some pages of proceeding book on 2.7.2004 and made overwriting over the same and attached new pages in their place. Thereafter the complainant and others approached the Sub-divisional Officer and Block Development Officer, Dumraon and filed petition for taking action against accused petitioners but they sat over the matter and later on the authorities informed that the removed page nos. 15 to 16 have been attached in the said register. The complainant on 21.8.2004 learnt that those removed pages have not been attached. Thereafter he filed the complaint before the Chief Judicial Magistrate, Buxar.

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The learned Chief Judicial Magistrate, Buxar on receipt of complaint petition sent a copy of the same to Dumraon police station for registration and investigation and on the basis of which the present case i.e. Dumraon P.S. case no. 166/05 came into existence. It further appears that the police investigated the matter and submitted final report as mistake of fact. It appears from the impugned order dated 7.8.2006 that the Chief Judicial Magistrate examined the materials available on the record and took cognizance against the petitioners accused. Against the said order, the

petitioners have preferred the present application before this Court.

Learned counsel appearing on behalf of the petitioners submitted that at the relevant time petitioner no.1 was up-mukhiya, petitioner no.2 was working as panchayat sewak and the last petitioner was Agriculture Officer of Dumraon block. He submitted that the cognizance against the petitioners should not have been taken without prior sanction of the State Government as all the petitioners were functioning as public servant. In this connection he referred to section 170 of the Bihar Panchayat Raj Act, 2006. He also submitted that the cognizance against the petitioner no.3 is hit by section 197 Cr.P.C. Learned counsel further submitted that during investigation the police did not find any replacement of pages rather all the pages were found in tact. He submitted that the learned Chief Judicial Magistrate in the impugned order has not said that he found cutting in page nos. 13 to 16. Learned counsel pointed out that during investigation not a single beneficiary of the above scheme of the State Government was examined by the police. In short the argument of learned counsel is that cognizance taken against the petitioners is bad in law.

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Learned counsel for opposite party no.2, on the other hand, supported the impugned order and submitted that at this stage no interference is required. He submitted that the impugned order indicates the judicial satisfaction of the learned Magistrate. He also submitted that in case of forgery the protection of public servant is not available to the accused.

It appears from the case diary that during investigation the beneficiaries of the General Indira Awas Yojna and Pradhan Mantri Indira Awas Yojna were not examined by the police. It further appears from paragraph 17 of the case diary that during investigation the police did not find any replacement of page nos. 13 to 16 from the proceeding book. The impugned order of learned Chief Judicial Magistrate does not indicate that he found any cutting in page nos. 13 to 16. On the other hand, the same indicates that he found cutting in page 17 onwards.

Section 170 of Bihar Panchayat Raj Act, 2006 reads as follows:

> "Public Servant__ All members, officers and employees of the Gram Panchayat, Panchayat Samiti and Zila Parishad shall be deemed, when acting or purporting to act in pursuance of the discharge of their duties, or in the exercise of their powers under this Act or under the rules or bye-laws made thereunder, to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act, 45 of 1860)."

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It is admitted position that Mukhiya, Panchayat sewak and Agriculture Officer are public servant and therefore, they cannot be prosecuted for an offence committed by them in discharge of their official duties without prior sanction of the State Government. The grievance of opposite party no.2 is that it is not the duty of a public servant to commit forgery in the record and therefore, the protection as provided is not available to them. It appears from the case diary that during investigation not a single witness claimed to have seen

the petitioners committing the alleged forgery in the register. The police did not find any replacement of page nos. 13 to 16 from the proceeding book. It appears from the pleadings of the parties that in the present case no sanction has been obtained by the complainant for launching the present prosecution against petitioners accused.

There is allegation in the complaint petition that the complainant met the Sub-divisional officer and Block Development Officer and informed about the alleged incident but surprisingly those two officers were not examined by the police during investigation. This Court has examined the entire materials available on record. A person cannot be prosecuted on the basis of suspicion. The judicial process should not be an instrument of oppression or needless harassment. Sufficient grounds do not mean sufficient ground for conviction but such evidence as would be sufficient to put the accused upon trial. It appears from the impugned order that the learned Magistrate has acted mechanically. In the case diary there is no material to support the allegation.

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In the aforesaid facts and circumstances, this Court finds that the continuance of the prosecution of the petitioners would be an abuse of the process of the court. This application is accordingly allowed and the order of cognizance as against the petitioners is hereby quashed.

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(M.Saran,J)